IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13093 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BABULAL HASTIMAL MARWADI

Versus

COMMISSIONER OF POLICE

Appearance:

MR YOGESH S LAKHANI for Petitioner

MR RC KODEKAR, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 11/05/2001

ORAL JUDGEMENT

1. Heard the learned advocate Mr. Yogesh Lakhani for the petitioner and Ld. AGP Mr. R.C. Kodekar for the respondent State.

2. In the present petition the petitioner has challenged the detention order dated 16/8/2000 passed by the Police Commissioner, Ahmedabad City under Section 3 (1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short 'the PASA Act') under Article 226 of the Constitution of India.

3. The petitioner has been detained at Bhavnagar Jail as Class-II detenu. The grounds of detention dated 16/8/2000 have been communicated and supplied to the petitioner u/S. 9(1) of the PASA Act. According to the grounds of detention in all 3 offences have been registered against the present petitioner in respect to Sections 143, 147, 148, 307, 323, 324 and 114 of the Indian Penal Code. Last offence was registered on 6/7/2000. According to the grounds of detention the present petitioner was released on bail in respect to C.R. No. 279/1998 of Shaher Kotda Police Station and in respect to two other offences registered at C.R. Nos. 154/2000 and 157/2000 of Meghaninagar Police Station the petitioner was required to be arrested.

4. The statements of the witnesses, whose identity has not been disclosed, have been recorded in August 2000 and verified by the detaining authority in August 2000. It is required to be noted that in recording the statements the exact date has not been mentioned and even in verifying the statements the exact date has also not been mentioned by the detaining authority. The detaining authority has not given any date that on which date the statements have been verified, which amounts to a clear non-application of mind on the part of the detaining authority. The respondent State has filed the reply which has been taken on record.

5. The representation has been made by the petitioner against the detention order on 25/8/2000, which has remained unanswered and the same has not been considered by the State authority.

6. Mr. Lakhani, learned advocate appearing for the petitioner has submitted that it is a clear case of total non-application of mind on the part of the detaining authority while exercising powers under Section 3 (1) of the PASA Act. Thus, the statements of the witnesses, whose identity has not been disclosed, have been recorded by the concerned Police Inspection in August 2000 (pp. 215 to 221). In the said statements no date has been mentioned showing the date on which such statements have been recorded. Similarly even no date has been mentioned by the detaining authority to prove the fact that on

which date the statements of the witnesses have been verified by the detaining authority. In absence of exact date of recording the statements and verifying the same, the detention order is required to be quashed and set aside. Mr. Lakhani has submitted that even in case where detention order has been passed on the very next day after the date of verification by the detaining authority, this Court has taken the view in the decision reported in [2000] 3 G.L.R. p. 2696 that such type of orders passed by the detaining authority in mechanical manner amounts to non-application of mind. The second contention raised by Mr. Lakhani that the representation dated 25/8/2000 has not been considered at all by the concerned authority and hence the order of detention is required to be quashed and set aside.

7. Ld. A.G.P. Mr. Kodekar is not able to explain the situation that why the exact date has not been mentioned by the concerned recording authority as well as verifying authority. Ld. AGP submitted that detailed reply has been filed by the detaining authority, but he is not able to satisfy the Court as to why the exact date has not been mentioned while recording and verifying the statements by the concerned authority. Mr. Kodekar is also not able to give the answer that whether the representation has been considered by the State authority or not. However, he submitted that looking to the averments made in the reply the authority has applied the mind and after having subjective satisfaction the order of detention has been passed against the present petitioner and therefore, the order of detention is legal and valid and which does not require any interference by this Court.

8. I have heard the learned advocates appearing on behalf of the respective parties. It is apparent from the record pages 215 to 221 that the statements which have been recorded are undated statements and similarly the statements which have been verified are also undated and, therefore, it amounts to non-application of mind and order of detention has been passed by the detaining authority in a mechanical manner. It is necessary to note that when a statement of such witness has been verified by the detaining authority and on the next date if the detention order is passed, even in that circumstances this Court has taken the view in the case of Ranubhai B. Bharvad v. State reported in [2000] 3 G.L.R. page 2696 that such order passed by the detaining authority amounts to exercising powers in a mechanical manner and devoid of application of mind. The relevant observations from the above decision are as under :-

"After referring to Kalidas C. Kahar v. State of Gujarat, 1993 (2) GLR 1659 the Court observed:

The statements of the three witnesses in the instant case which were recorded before the Police Inspector on 17th August 1999, 21st August 1999 and 25th August 1999 with regard to the incidents dated 10th July 1999, 13th June 1999 and 26th June 1999 were the material along with the proposal which is said to have been made on 27th August 1999 and it is clear from the record that it was on 29th August 1999 that the detaining authority has recorded its verification of all these three statements. There is nothing on record to show that the detaining authority had considered the proposal dated 27th August 1999 at any time prior to 29th August 1999 and on 29th August 1999, all that has been done is that the concerned witnesses have stated before the detaining authority that the statements as had been made on the respective dates were correct and immediately thereafter on the following day, i.e., on 30th August 1999 the detention order has been passed.

The manner in which the verification has been recorded of the statements made by these three witnesses for the purpose of section 9(2) shows that the same has been done only as an empty formality in asmuch as the same witnesses had been called before the detaining authority and the detaining authority had recorded that whatever the statements made by the witnesses were correct. Thus, the whole exercise appears to have been done as a mechanical exercise and it is not borne out that there is an active application of mind on this aspect of the matter by the detaining authority for the purpose of verification of the facts as had been disclosed by the witnesses so as to express the fear and to invoke the privilege u/S. 9(2) against the disclosure of the names and addresses of the witnesses and it thus appears on the basis of the ratio of the decision of the Division Bench that it is a case of wrong exercise of power u/S. 9(2) and it is established that in such cases, the wrong exercise of power u/S. 9(2) adversely affects the detenu's right of making an effective representation guaranteed under Article 22 (5) of the Constitution of India.

Once the materials are placed before the detaining authority with the proposal by the sponsoring authority, it must have reasonably sufficient time for the purpose of verification of the fact and the consideration of the entire material with an active application of mind and the order has to be passed at the earliest opportunity, but in this process to strike the balance between the public interest and the right of the detenu either of the two should not be defeated in any manner and the whole process must indicate that the detaining authority had applied its mind with the requisite approach and it also devoted sufficient time before arriving at the conclusion that the detenu was required to be detained immediately. In the facts of the present case, I find that this requirement of maintaining the balance has been defeated and the detention order has been passed on 30th August 1999, i.e., on the next day to the date on which the materials were considered by the detaining authority."

9. The second contention raised by Mr. Lakhani is that the concerned authority has not considered the representation made by the petitioner. As regards this contention this Court has taken the view in Special Civil Application No. 7864 of 2000 dated 26/9/2000 that non-consideration of the representation immediately amounts to denying the right of the petitioner to have effective opportunity of having considered the representation and is violative of Article 22(5) of the Constitution of India. The relevant observation made in para. 8 of the said judgment reads as under :-

"Ms. K.U. Mishra, learned advocate for the petitioner has cited an authority of Harish Pahwa vs. State of U.P. and others, reported in AIR 1981 S.C. 1126, wherein it has been held that it is the duty of the State to proceed to determine representations with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. Here in this case, none of the respondents has filed affidavit-in-reply. They have also not

explained the above delay and, therefore, the safeguard guaranteed under Article 22 (5) of the Constitution of India is violated and therefore, order of detention which is challenged in this writ petition is bad in law and it requires to be set aside on that count only."

10. In view of the observations made of this Court and considering the fact of undated recording and verifying of the statements by the detaining authority, I am of the opinion that the detaining authority has exercised the powers in a mechanical manner and, therefore, the order of detention is required to be quashed and set aside.

11. In the result, the present petition is succeeded and the order of detention dated 16/11/2000 is vitiated and is hereby quashed and set aside. The detenu - Babu Hastimal Marvadi (Rathod), who has been detained at Bhavnagar Jail be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. No order as to costs. Direct service is permitted.

[H.K. RATHOD,J.]

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